

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

FREDDY ADAN GRACIA,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

Case No. 1:24-cv-00441-BAM

ORDER DIRECTING CLERK OF COURT  
TO RANDOMLY ASSIGN DISTRICT  
JUDGE

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING PLAINTIFF'S  
APPLICATION FOR LEAVE TO PROCEED  
IN FORMA PAUPERIS BE DENIED

(Doc. 2)

**FOURTEEN (14) DAY DEADLINE**

Plaintiff Freddy Adan Gracia ("Plaintiff"), proceeding with counsel, seeks review of a decision of the Commissioner of Social Security. Plaintiff initiated this action on April 12, 2024. (Doc. 1.) On the same day, Plaintiff filed an application to proceed *in forma pauperis* under 28 U.S.C. § 1915. (Doc. 2.).

According to Plaintiff's application, he receives monthly income from a pension in the amount of \$3,500 per month. He also receives \$4,500 per month from his wife's income. (Doc. 2 at 2.) This amounts to an annual income of \$96,000.00 ( $\$3,500 \times 12 \text{ months} = \$42,000$ ;  $\$4,500 \times 12 = \$54,000$ ;  $\$42,000 + \$54,000 = \$96,000$ ). Plaintiff has two dependents – his wife and child. (*Id.* at 2.)

1 “To satisfy the requirements of 28 U.S.C. § 1915, applicants must demonstrate that  
2 because of poverty, they cannot meet court costs and still provide themselves, and any  
3 dependents, with the necessities of life.” *Soldani v. Comm’r of Soc. Sec.*, No. 1:19-cv-00040,  
4 2019 WL 2160380, at \*1 (E.D. Cal. Jan. 31, 2019). Many courts look to the federal poverty  
5 guidelines set by the United States Department of Health and Human Services (“HHS”) as a  
6 guidepost in evaluating in forma pauperis applications. *See Martinez v. Kristi Kleaners, Inc.*, 364  
7 F.3d 1305, 1307 n.5 (11th Cir. 2004); *Boulas v. United States Postal Serv.*, No. 1:18-cv-01163-  
8 LJO-BAM, 2018 WL 6615075, at \*1 (E.D. Cal. Nov. 1, 2018) (applying federal poverty  
9 guidelines to in forma pauperis application). For a family or household of three, the 2024 poverty  
10 guideline is \$25,820. *See U.S. Federal Poverty Guidelines Used to Determine Financial*  
11 *Eligibility for Certain Federal Programs*, available at <https://aspe.hhs.gov/poverty-guidelines>  
12 (last visited April 15, 2024).

13 Having considered Plaintiff’s application, the Court finds that he has not made the  
14 showing required by section 1915 that he is unable to pay the required fees for this action.  
15 Plaintiff’s household estimated annual income is more than three times the federal poverty  
16 guidelines. Indeed, Plaintiff’s estimated annual pension income alone is well above the federal  
17 poverty guidelines for a family or household of three. In light of this, there is no indication that  
18 Plaintiff is unable to pay the filing fee while also providing for the necessities of life.  
19 Accordingly, the Clerk of the Court is HEREBY DIRECTED to randomly assign a District Judge  
20 to this action.

21 Furthermore, it is HEREBY RECOMMENDED that:

- 22 1. Plaintiff’s application to proceed without prepayment of fees and costs (Doc. 2) be  
23 DENIED; and
- 24 2. Plaintiff be required to pay the \$405.00 filing fee in full to proceed with this  
25 action.

26 These Findings and Recommendation will be submitted to the United States District Judge  
27 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**  
28 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written

1 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s  
2 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the  
3 specified time may result in the waiver of the “right to challenge the magistrate’s factual  
4 findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*  
5 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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7 IT IS SO ORDERED.

8 Dated: April 15, 2024

9 /s/ Barbara A. McAuliffe  
10 UNITED STATES MAGISTRATE JUDGE  
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